

Service Date: July 23, 1998

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF YELLOWSTONE	)	UTILITY DIVISION
VALLEY ELECTRIC COOPERATIVE, INC.,)	
and MONTANA POWER COMPANY,	)	DOCKET NO. D98.5.105
Application for Approval of an Exclusive)	
Service Agreement.	)	ORDER NO. 6084

IN THE MATTER OF PARK ELECTRIC	)	UTILITY DIVISION
COOPERATIVE, INC., and MONTANA)	
POWER COMPANY, Application for Approval	)	DOCKET NO. D98.5.106
of an Exclusive Service Agreement.	)	ORDER NO. 6085

IN THE MATTER OF VIGILANTE ELECTRIC	)	UTILITY DIVISION
COOPERATIVE, INC., and MONTANA)	
POWER COMPANY, Application for Approval	)	DOCKET NO. D98.5.114
of an Exclusive Service Agreement.	)	ORDER NO. 6086

IN THE MATTER OF FERGUS ELECTRIC	)	UTILITY DIVISION
COOPERATIVE, INC., and MONTANA)	
POWER COMPANY, Application for Approval	)	DOCKET NO. D98.5.115
of an Exclusive Service Agreement.	)	ORDER NO. 6087

FINAL ORDER

Introduction

1. On or about May 2, 1998, pursuant to Montana's Territorial Integrity Act (Act), §§ 69-5-101 through 69-5-112, MCA, the utilities identified in the above titles filed with the Montana Public Service Commission (PSC) requests for approval of exclusive service agreements. Exclusive service agreements, as authorized by §§ 69-5-108 and 69-5-109, MCA, involve a division of certain geographical areas that present a possibility of future need for electric service, but also have, in or nearby, more than one utility capable of providing the anticipated service. The agreements designate the utility that will have the exclusive right to

serve in each of the areas, as divided into exclusive service territories by the agreement, with some exceptions pertaining to service to large customers. PSC approval of the agreements is required pursuant to § 69-5-112, MCA.

2. The requests for approval, as above-entitled, were publicly noticed through PSC-issued Notices of Opportunity for Public Hearing, dated June 3, 1998, through June 12, 1998. The PSC has received no comments or requests for hearing in response to the notices. The time for comments and requests for hearing having expired, the PSC now determines that the matters can be properly decided without further proceedings.

Findings of Fact

3. Montana Power Company (MPC), a party to each of the four agreements now being considered, is a public utility providing electric service in or near the areas which are the subject of the agreements. Yellowstone Valley Electric Cooperative, Inc. (Yellowstone), Park Electric Cooperative, Inc. (Park), Vigilante Electric Cooperative, Inc. (Vigilante), and Fergus Electric Cooperative, Inc. (Fergus), each a party to one of the four agreements now being considered, are electric cooperatives providing electric service in or near one or more of the areas which are the subject of the agreements.

4. The MPC / Yellowstone agreement pertains to certain areas in or near Billings, Montana. The MPC / Park agreement pertains to certain areas in or near Bozeman, Montana, and Livingston, Montana. The MPC / Vigilante agreement pertains to certain areas in or near Dillon, Montana. The MPC / Fergus agreement pertains to certain areas in or near Lewistown, Montana.

5. Each agreement clearly presents the terms and conditions of the agreement between the parties. Each agreement clearly identifies the geographical area involved and the division of that area into exclusive service territories, including as described by map and written description. None of the agreements include a transfer or exchange of existing customers.

6. The PSC determines that there is no apparent reasonable likelihood that any of the agreements will cause a decrease in the reliability of electric service to the existing or future

customers of the parties to the agreements (i.e. the utilities involved). The PSC also determines that there is a reasonable likelihood that each of the agreements will eliminate existing or potential uneconomic duplication of electric service facilities.

7. Each of the exclusive service agreements (i.e., MPC / Yellowstone, MPC / Park, MPC / Vigilante, and MPC / Fergus), including each agreement's attachments and accompanying maps and written descriptions, as filed before the PSC and maintained in the records of the PSC, are by this reference adopted herein as an integral part of this Final Order. The referenced agreements, primarily because of the maps involved, are not readily suitable for attachment to this Final Order.

Conclusions of Law

8. The filed requests for approval of exclusive service agreements, as entitled above and described above, and the agreements themselves, as referenced above, are proper in form and have been properly noticed and processed in accordance with all applicable provisions of the Act, as well as all applicable provisions of Title 69, MCA (Public Utilities), Title 2, Chapter 4, MCA (MAPA), and ARM Title 3, Chapter 2 (PSC Procedural Rules).

9. MPC, as a public utility providing electric services, and Yellowstone, Park, Vigilante, and Fergus, as electric cooperatives providing electric services, are "utilities" and "electric facilities providers" (for present purposes these are equivalent terms and will be referred to as "utilities") within the meanings of those terms in the Act. §§ 69-5-102(3) and 69-5-102(8), MCA. As utilities, MPC, Yellowstone, Park, Vigilante, and Fergus, are authorized by the Act, or directed by the Act in some instances, to enter exclusive service agreements. §§ 69-5-108 and 69-5-109, MCA. The PSC has jurisdiction regarding review and approval of exclusive service agreements pursuant to § 69-5-112, MCA.

10. The agreements now being considered implement § 69-5-109, MCA. Pursuant to this statute utilities in or near incorporated municipalities having a population in excess of 3,500 persons and having annexed areas since 1985 or having existing planning zones on May 2, 1997, must negotiate agreements dividing such areas into exclusive service territories by May 2, 1998,

or (in the absence of agreements) the PSC must divide such annexed and planning zone areas into exclusive service territories.

11. The agreements have been submitted to the PSC for approval and are therefore in accordance with § 69-5-112(1), MCA. Each agreement clearly identifies the geographical areas involved and the division of the areas to be served, including by map and written description, and each agreement clearly presents the terms and conditions of the agreement. The agreements are therefore in accordance with § 69-5-112(1)(a) and (b), MCA. The agreements do not contemplate a transfer of exchange of customers, so additional information required by § 69-5-112(2), MCA, is not required.

12. In accordance with § 69-5-112(3)(a), MCA, the PSC has considered the likelihood that any of the agreements will cause a decrease in the reliability of electric service to existing or future customers of the utilities. The PSC determines that there is no such likelihood. In accordance with § 69-5-112(3)(b), MCA, the PSC has considered the likelihood that the agreements will eliminate existing or potential uneconomic duplication of electric service facilities. The PSC determines that there is such likelihood.

13. Exclusive service agreements do not apply to large customers. § 69-5-109, MCA. Electric service to large customers (400 kw or larger load), including in the agreed-to exclusive service areas, remains governed by § 69-5-106, MCA, which involves a determination, primarily by the competing utilities, as to which has the lowest cost of extending its facilities to serve the customer, no matter where the large customer is located in relation to their existing facilities.

14. The exclusive service agreements are in compliance with the Act. The agreements fulfill the purposes of the Act. The agreements are in the public interest as that interest is stated or implied by the Act. The agreements should be approved.

ORDER

IT IS HEREBY ORDERED that the exclusive service agreements, as filed and incorporated herein by reference, are approved as filed. It is further ordered that each of the exclusive service agreements creates one or more exclusive service territories and no utility or

electric services provider, except the one so designated to do so in the agreement, may offer, construct, or extend electric service facilities into any of the identified exclusive service territories, except as may otherwise be specifically allowed by law (e.g., service to large customers) and in accordance with all procedures which may govern application of such exception. No modification, change, or correction of any agreement approved in this Final Order may be made without first obtaining PSC approval. Each utility or electric service provider that is party to one or more of the approved agreements shall make the exclusive service agreement to which it is a party and which pertains to the area affected readily accessible to the public in the area affected, by maintaining a copy of the agreement in the utility business office located nearest that exclusive service area.

Done and dated this 21st day of July, 1998, by a vote of 5-0.

DOCKET NO. D98.5.105, ORDER NO. 6084
DOCKET NO. D98.5.106, ORDER NO. 6085
DOCKET NO. D98.5.114, ORDER NO. 6086
DOCKET NO. D98.5.115, ORDER NO. 6087

6

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chair

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.